

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

JOHN MAYHEW,
Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,
Defendant.

Case No. 13-cv-04521-BLF

**ORDER TO SHOW CAUSE WHY
ACTION SHOULD NOT BE DISMISSED
FOR FAILURE TO PROSECUTE**

For the reasons discussed below, Plaintiff is hereby ordered to show cause, in writing and before October 31, 2014, why this action should not be dismissed for failure to prosecute and failure to comply with a court order.

I. BACKGROUND

This case was reassigned to the undersigned judge on April 17, 2014. Because it was not clear whether Plaintiff had been served with the Social Security Procedural Order or Defendant's answer, the Court directed that Plaintiff be served (or possibly re-served) with those documents and directed Plaintiff to file a motion for summary judgment or remand within twenty-eight days after service of the answer.

Defendant served the answer on May 7, 2014, making Plaintiff's motion for summary judgment due on June 4, 2014. On June 2, 2014, Plaintiff filed an uncaptioned document along with a proof of service indicating that he had mailed "Plaintiff's Motion for Summary Judgment Letter" to defense counsel. The Court took the uncaptioned document to be Plaintiff's motion for summary judgment.

However, on June 2, 2014, Plaintiff also submitted a document captioned, "Amending [sic] Complaint for Judicial Review of Decision of Commissioner of Social Security." The

document was stamped “Received” by the Clerk’s Office. The Court determined that Plaintiff was entitled to amend his complaint as of right, as he had submitted the amended pleading within twenty-one days after service of the answer, and directed the Clerk’s Office to file the amended complaint. Because Plaintiff had amended his pleading, the motion for summary judgment filed with respect to the original complaint was moot. The Court issued a detailed scheduling order, directing Defendant to answer the amended complaint and directing Plaintiff to file a motion for summary judgment within twenty-eight days after service of the answer.

Defendant served her answer to the amended complaint on August 12, 2014. Plaintiff did not file a motion for summary judgment within twenty-eight days thereafter or as of the date of this order.

II. DISCUSSION

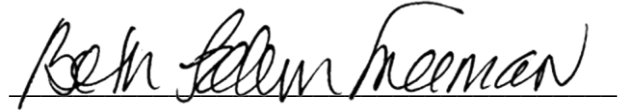
“In determining whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

This Court has delayed the present litigation once to ensure that Plaintiff received service of relevant documents, and a second time to ensure that Plaintiff was afforded the opportunity to amend his pleading as of right before being required to file a motion for summary judgment. The Court’s last order gave clear direction with respect to the filing of Plaintiff’s motion for summary judgment. Plaintiff has failed to comply with that order. Defendant, a representative of a public entity, has a strong interest in moving the litigation forward expeditiously, especially given the prior delays for the benefit of Plaintiff. The Court likewise has a strong interest in managing its docket. While public policy favors disposition of cases on their merits, the Court cannot move the case forward without Plaintiff’s participation and compliance with its orders. Accordingly, the Court concludes that the most appropriate course at this point is to direct Plaintiff to show cause why the case should not be dismissed for failure to prosecute.

III. ORDER

Plaintiff is hereby ordered to file a response to this order, on or before October 31, 2014, showing cause why this action should not be dismissed for failure to prosecute and failure to comply with a court order.

Dated: October 14, 2014


BETH LABSON FREEMAN
United States District Judge